

Fair Political Practices Commission

Memorandum

To: Chairman Johnson, Commissioners Hodson, Huguenin, Leidigh, & Remy

From: William J. Lenkeit, Senior Commission Counsel
Scott Hallabrin, General Counsel

Subject: Second Prenotice Discussion of Proposed Amendments to Regulation 18946.4

Date: May 30, 2008

Proposed Commission Action: Approve notice of proposed amendments to Regulation 18946.4 regarding tickets to events for nonprofit and political fundraisers.

Reason for Proposal: The proposed regulation would eliminate the “no value rule” for tickets to fundraising events for 501(c)(3) organizations. Under this rule, tickets to events such as the Rose Bowl Game and Rose Parade are considered to have no value because the events are fundraisers for 501(c)(3) organizations. Additionally, tickets for 501(c)(3) fundraising events that include golf tournaments, concerts, and other popular events may be provided by persons other than the organization itself. But because, pursuant to this regulation, these items have no value, they escape even the minimum disclosure requirements imposed by the Act for reporting gifts (\$50), even though their value may exceed the statutory limit allowed for the receipt of gifts (\$390). Staff proposes this loophole be eliminated by applying the valuation method provided in the regulation for other types of nonprofit organizations for all nonprofits, including 501(c)(3) organizations.

An additional proposed amendment has been added that would clarify what would become the general rule for all nonprofits if the 501(c)(3) exception is eliminated. The current rule provides that the value of the ticket to a charitable fundraiser for a non-501(c)(3) organization is the face value minus the amount indicated as the portion that is donated to charity. The amendment would provide the value is the face value of the ticket minus the amount allowable as a deduction under Internal Revenue Services provisions. Essentially, this would harmonize the rules for all nonprofit events whether or not the ticket provided the necessary information and whether or not the event was for an 501(c)(3) organization and, at the same time, eliminate the need to develop some complicated means of placing a value on the “benefit” portion of the ticket.

Finally, the proposed amendments would also expand the current “no value rule” for attendance at political fundraising events put on by California recipient committees to comparable events put on by committees regulated by federal law for fundraising events held in California for candidates for federal office.

Background: 501(c)(3) Fundraiser Exception

Regulation 18946.4 (formerly 18726.8) was originally adopted in 1987 along with several other regulations dealing with the definitions of “gift.” The regulations represented the codification of existing Commission advice and opinions on the subject of gifts, and the Commission intended that this information all be consolidated in one location to “provide the public and public officials with clear guidelines on how to treat gifts for the purposes of disclosure and disqualification.” (Staff memorandum dated December 30, 1986.) The original language is substantially the same as it now exists, except it did not include the exception for 501(c)(3) organizations set forth in the current form of the regulation under subsection (b).

In 1993, regulation 18726.8 was renumbered to its current 18946.4. Additionally, in response to a letter from the Governor’s office dated August 17, 1991, requesting the regulation be amended to provide tickets to charitable events have no value, the Commission adopted subdivision (b), limiting the proposed “no value exception” to 501(c)(3) charitable organizations.

At the first prenotice Commission meeting held on April 10, 2008, after reviewing a comment letter from Michael Martello from the California League of Cities, the Commission directed staff to bring back the proposed changes at a second prenotice meeting to consider the issues raised in the letter and to solicit additional public input regarding the potential effects of the proposed amendments. Subsequent to the meeting, staff solicited public input through a request posted on the Commission website. (See Request for Public Comment www.fppc.ca.gov/pdf/501c3InputNotice.pdf.) As a result, staff received several comments supporting the proposed changes. Additionally, several blogs and at least one newspaper published comments. No unfavorable comments were received.

After consideration of the comments received from Mr. Martello, staff believes the proposed language eliminating the no value rule should stand. First of all, while staff appreciates the “legitimacy behind encouraging businesses to support local nonprofits,” as suggested in the letter, staff does not believe it should be a function of the Political Reform Act to further that purpose by providing a method for businesses to make undisclosed gifts to public officials in the name of supporting nonprofits. Staff considered modifying the no value rule to provide only the food and beverage received has no value. However, staff determined only the charitable donation portion of the ticket should be excluded from any gift value, and the remaining benefit portion should be treated as any other gift, subject to the \$50 reporting threshold and the \$390 limit.

Several modifications have been made to the proposed language since the first prenotice meeting to clarify when the nonprofit exception is applicable and to

simplify the means of calculating the reportable value. Under the proposed language, in addition to no longer providing the separate “no value” rule for 501(c)(3) organizations, the general rule for nonprofits that allows for reducing the value by the charitable donation portion will only apply if the ticket is provided by the organization itself. If provided by an outside source, the value is the full face value of the ticket.

Additionally, rather than using two different methods for determining the value of the reportable gift depending on whether or not the ticket indicates the charitable donation portion, the new rule simply proposes to adopt the method used by the Internal Revenue Service in determining the deductible portion. This method provides a consistent and simplified means for determining the reportable value.

Finally, the language proposed at the first prenotice meeting that would have extended the rule for political fundraisers for state offices to fundraisers for federal offices would now be limited to fundraisers held in California

Staff Recommendation: Staff recommends that the proposed language be noticed for adoption.